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ABSTRACT

An appreciation of the religious milieu of the John Peter Zenger libel case of 1735 can help explain the nature of the Zenger defense as prepared by Alexander Hamilton, the meaning of the jury's verdict, and the ambiguous legacy of the trial for freedom of expression in the United States. In essence, the case was a disputation on "truth" and on how truth is revealed to humans. Because this issue lay at the heart of Protestant religion as well as of colonial politics, the Zenger case may be seen as an interesting intersection of the two. Indeed, the case and the jury's verdict were closely associated with the spirit of the Great Awakening of religion. Like the Great Awakening, the Zenger case reflected the skepticism about human authority felt by ordinary people who possessed a deep faith in the existence of God and of truth. Like the ministers of "awakened" congregations, who were willing to reject the authority of creeds and hierarchies, the Zenger jurors were willing to reject the instructions of the chief justice of New York. Like the revival converts who asserted their right to interpret the law of God, the Zenger jury asserted the right of ordinary people to interpret human law. In both instances, the operative principle was not freedom, but truth. (FL)

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THE AUTHORITY OF TRUTH

--Religion and the John Peter Zenger Case--

by

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Abstract

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This paper is about religion in the John Peter Zenger case of 1735. Its main argument is that an appreciation of the religious milieu of the case can help to explain the nature of the Zenger defense, the meaning of the jury's verdict, and the ambiguous legacy of the trial for freedom of expression in America. In essence, the Zenger case was a disputation on truth, and on how truth is revealed to man. Because this issue lay at the heart of Protestant religion as well as colonial politics in the 1730s, the Zenger case can be seen as an interesting intersection of the two. Indeed, the paper argues that the Zenger case and the jury's verdict were closely associated with the spirit of the Great Awakening of religion in the 1730s and '40s.

Throughout their history, Americans have been strangely intolerant libertarians, often suppressing individual liberties in the name of a more transcendent freedom. It is my contention that America's heritage of freedom of expression is ambiguous, at least in part, because of its religious roots. I try to show in this paper how some of these roots were revealed in the John Peter Zenger affair.

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Presented to the History Division of the Association for Education in Journalism and Mass Communication, annual convention, Gainesville, Florida, August, 1984.

## THE AUTHORITY OF TRUTH

### --Religion and the John Peter Zenger Case--

... in New York a man may make very free with his God, but he must take special care what he says of his governor.

-- Andrew Hamilton, 1735<sup>1</sup>

This paper is about religion in the John Peter Zenger case of 1735. Its main argument is that an appreciation of the religious milieu of the case can help to explain the nature of Zenger's defense, the meaning of the jury's verdict, and the ambiguous legacy of the trial for freedom of expression in America. In essence, the Zenger case was a disputation on truth, and on how truth is revealed to man. Because this issue lay at the heart of Protestant religion as well as colonial politics in the 1730s, the Zenger case can be seen as an interesting intersection of the two. Throughout their history, Americans have been strangely intolerant libertarians, often suppressing individual liberties in the name of a more transcendent freedom. It is my contention that America's heritage of freedom of expression is ambiguous, at least in part, because of its religious roots. I will try to show in this paper how some of these roots were revealed in the Zenger affair.

## II

Religion lay beneath the surface and between the lines of the Zenger case; the overt issues were political and legal. John Peter Zenger's New York Weekly Journal, which commenced publication in 1733, has been described as the "first

political independent" newspaper in America.<sup>2</sup> This is not quite true. It would be more accurate to call it the first political party paper. The Journal was launched by a group of New York politicians, led by Lewis Morris, one of the province's most wealthy and powerful men. The aim of the Morrisite party was to undermine the administration of Governor William Cosby, who had arrived in New York in 1732. The purpose of the paper was to stir up public opinion in order to turn a narrow political struggle into a popular crusade.<sup>3</sup> Although Zenger was the printer and proprietor of the Journal, the true editor seems to have been James Alexander, a well-known lawyer, a member of the Morrisite circle, and later mastermind of Zenger's defense.<sup>4</sup>

The content of the Journal clearly reflected its unabashed political purpose. The heart of each issue was usually a political essay, either an excerpt from "Cato's Letters" or a pseudonymous letter written by Alexander or one of the other Morrisite leaders. Most of these essays were abstract attacks on tyranny and official abuse of power, but the connection to the Cosby administration was always unmistakable. Like other American newspapers of the time, the Journal also carried the usual foreign news briefs, shipping notices, and local advertisements. But even some of the ads were thinly disguised satiric attacks on the governor and his supporters.<sup>5</sup> Not surprisingly, Governor Cosby immediately began to plot his revenge. Throughout 1734, Cosby sought, unsuccessfully, the help of the New York Grand Jury and the colonial Assembly in suppressing the paper. Finally, in November, 1734, Zenger was arrested and charged with publishing seditious libels. After much legal wrangling and more than seven months in jail, Zenger came to trial in August of 1735.<sup>6</sup>

The story of the trial itself is well known, largely because of the perennial popularity of James Alexander's pamphlet A Brief Narrative of the Case and Trial of John Peter Zenger, which was first published in 1736 and frequently reprinted thereafter.<sup>7</sup> In the trial, attorney Andrew Hamilton, then the most

celebrated of American courtroom lawyers, made his famous plea that truth should be admitted as a defense and that the jury should decide not only the facts of publication but also how the law should be applied. These two principles were good politics in New York but bad law in an English court, and the presiding judge rejected them both. Hamilton ignored the rulings from the bench, however, and appealed directly to the jury. He admitted that Zenger published the statements in question, but he argued that they were true statements, and therefore not libelous. And he told the jurors that they had the right to so decide. Hamilton's plea on both principles was persuasive, and the jury brought in a verdict of "not guilty." When the verdict was read, three "huzzas" rang out in the courtroom. And later that night the Morrisites gathered at the Black Horse Tavern to drink toasts to Hamilton and to celebrate the vindication of liberty in America.<sup>8</sup>

The legal and political significance of the Zenger case seemed simple enough to the celebrants that night at the Black Horse. But the meaning of the case has been warmly debated by historians, lawyers, and journalists ever since. In the nineteenth century, the trial was generally viewed as a landmark in the growth of political freedom and resistance to tyranny in America -- something like the first shot fired in the American Revolution.<sup>9</sup> In the early twentieth century, the case came to be celebrated more as a legal landmark in the development of the law of libel. Vincent Buranelli's laudatory account of the trial was probably the apotheosis of this view. He declared in 1957 that Zenger's acquittal "was not just a personal thing, or the wresting of a momentary privilege from an indolent or interested official. It was a legal precedent."<sup>10</sup> After 1960, prompted chiefly by the work of Leonard Levy, historians moved away from this view, generally agreeing that the Zenger verdict had no direct impact on the law of libel and little indirect legal impact of any sort.<sup>11</sup> The standard view today seems to be that the case was neither a political nor a

legal landmark, but that it did become an important symbolic event for eighteenth-century politics in America -- a kind of "guiding light" for those who were gradually developing an ideology of freedom of expression."<sup>12</sup>

But what was this developing ideology of free expression? It was not, certainly, an unqualified libertarian commitment to individualism and individual freedom. It was, rather, a belief that people should have the right to speak the truth. This was Andrew Hamilton's plea to the twelve jurymen. He asked them to affirm, not the sanctity of Zenger's individual rights, but the sanctity of the truth. "Truth ought to govern the whole affair of libels," Hamilton told the jury. "For as it is truth alone which can excuse or justify any man for complaining of a bad administration, I as frankly agree that nothing ought to excuse a man who raises a false charge or accusation." Time and time again, Hamilton made it clear that he was pleading only for Zenger's right to speak the truth.<sup>13</sup> Leonard Levy, writing from the perspective of a twentieth-century libertarian, has criticized this doctrine as an exceedingly weak foundation for freedom of expression. According to Levy, "Hamilton did not appreciate that truth is a mischievous, often an illusory, standard that often defies knowledge or understanding and cannot always be established by the rules of evidence." It is "shallow soil" in which to plant the seeds of liberty.<sup>14</sup>

Levy, of course, is probably right. But his perspective is too present-minded, and he misses the point. Truth could not have been avoided as the standard in the Zenger trial, because the nature of truth was what the trial was all about. Hamilton did not, he could not, ask the jury to decide the nature and extent of individualism and free thought. He asked them instead to decide the question, "What is truth?" In our age of relativism and skepticism, this would seem to be the more troubling question. But in 1735, the jury was prepared to take it on. It is my contention that the audacity displayed by the Zenger jury in accepting the burden of this great question is understandable

only when viewed in the context of religion -- religion as displayed in the trial itself, in the pages of the New York Weekly Journal, and in the wider society of colonial New York in 1735.

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First, it is clear from the text of the trial that Hamilton meant to associate politics and political liberty with religion and religious dissent. Several of the cases he cited as precedents, such as the famous libel trial of the seven bishops in England in 1688, involved religious disputes rather than purely political matters.<sup>15</sup> In his discussion of the evils that arise when judges and other authorities have too much power, Hamilton used images of religious repression and "popery." He told the jury:

There is heresy in law as well as in religion, and both have changed very much; and we well know that it is not two centuries ago that a man would have been burnt as an heretic for owning such opinions in matters of religion as are publicly wrote and printed at this day. They were fallible men, it seems, and we take the liberty not only to differ from them in religious opinions, but to condemn them and their opinions too; and I must presume that in taking these freedoms in thinking and speaking about matters of faith or religion, we are in the right.<sup>16</sup>

The phrase "we are in the right" is an important one, for it suggests the centrality of truth. Hamilton did not argue, in this passage or anywhere in the trial, that men should be freed from the obligation of truth, whether in religion or government. He argued only that the history of religion and politics showed that great men, including kings and judges, popes and bishops, could be wrong. The people of England, he said, had learned during the reigns of the Catholic Stuart kings that it was dangerous to trust even "the greatest men in the kingdom" with the power to judge what was true and what was false. So who should judge what is true or false? In a trial, Hamilton said, it must be the jury.<sup>17</sup> And he went to some trouble in the Zenger trial to demonstrate that the question of truth was peculiarly the jury's domain.

Hamilton's argument was twofold. First, he pointed out that the jurymen

brought special knowledge to the case from their experience outside the courtroom. "The law supposes you to be summoned out of the neighborhood where the fact is alleged to be committed," he said, "and the reason of your being taken out of the neighborhood is because you are supposed to have the best knowledge of the fact that is to be tried."<sup>18</sup> Actually, this was a rather shaky legal position. By 1735, the practice had already been long established that juries were to consider only evidence presented in the trial itself.<sup>19</sup> The special knowledge of jurors, however, was not the main thrust of Hamilton's argument. His main point was that libel exists in the eye of the beholder. For a statement to be libel, it must be "understood" to be libelous. This perceptual quality of libel confounds the issues of fact with issues of law, for in Hamilton's scheme the truth or falsity of the statements must affect how they are "understood." Thus, the decision on both fact and law becomes the province of the jury. "Then it follows," Hamilton declared, "that those twelve men must understand the words in the information to be scandalous, that is to say false."<sup>20</sup>

Hamilton admonished the jurors that they did not have to defer to any authority on matters of truth. "A man cannot see with another's eye, nor hear with another's ear; no more can a man conclude or infer the thing by another's understanding or reasoning," he told them. Thus, "jurymen are to see with their own eyes, to hear with their own ears, and to make use of their own consciences and understandings in judging of the lives, liberties, or estates of their fellow subjects."<sup>21</sup> Hamilton made it clear to the jurymen that authority lay within themselves: "A proper confidence in a court is commendable; but as the verdict (whatever it is) will be yours, you ought to refer no part of your duty to the direction of other persons."<sup>22</sup>

To make the point that libel exists in the eye of the beholder, Hamilton talked about the interpretation of Bible passages. He cited passages that

speak of corrupt leaders, of blind watchmen, and of "greedy dogs that can never have enough." He suggested that any of these passages could, with the help of innuendoes connecting them to the Cosby administration, be denounced as libels.<sup>23</sup> Like Zenger's paper or any other publication, even the Bible might be interpreted differently by different people. Thus, it behooved the jury not to abandon their right of interpretation to an ostensibly higher authority. In matters of interpretation of truth, no man possessed more authority than another.

Hamilton's Biblical allusions puzzled and infuriated the first great critic of the Zenger case, a West Indian lawyer who published a detailed rebuttal of Hamilton's arguments in the Barbados Gazette in 1737 under the pseudonym "Anglo-Americanus."<sup>24</sup> Though critical of Hamilton on every point, Anglo-Americanus seemed especially annoyed that "the Holy Scriptures [were] brought in to season his jokes." But, he added sarcastically, because this misuse of the Bible seemed "designed only for a sally of wit and humor, I shall not offer to detract from its merit; considering too it had so happy an effect as to set the good people alaughing when they heard the word of God most ingeniously burlesqued in a Christian court."<sup>25</sup>

In fact, Hamilton's exercise in Biblical exegesis apparently evoked, not derision, but "applause" and "approbation" from the spectators in the court-room.<sup>26</sup> Considering the verdict as well as the applause, it appears that these New Yorkers did not view Hamilton's little homily as a burlesque upon religion. Quite the contrary. They seemed to understand his point very well -- perhaps because it grew quite naturally from the arguments that had been propounded both in the pages of the New York Weekly Journal and in the sermons of popular preachers of the time.

IV

In several ways, including religious sentiment, Hamilton's courtroom plea reflected the principles that John Peter Zenger's newspaper had professed during the two years before his trial. The themes developed in the Journal were chiefly legal and political, just as they were in the trial. But the association of political liberty with religious dissent was the underlying foundation upon which many of the key arguments were built. As in the trial, the fundamental question was: What is truth, and how is it revealed to man?

The New York Weekly Journal is sometimes remembered today as a virtual anthology of "Cato's Letters." This is an exaggeration, but it is true that these famous radical Whig essays were frequently and prominently featured. "Cato's Letters," written by John Trenchard and Thomas Gordon, were first published in London newspapers beginning in 1720.<sup>27</sup> Many American newspapers, in addition to the Journal, quickly became devoted admirers of Cato, and the essays were regularly reprinted and quoted throughout America during the fifty years before the Revolution. In "Cato's Letters," Trenchard and Gordon developed a philosophy of liberty that had at its core the concept of freedom of expression.<sup>28</sup> Central to Cato's philosophy was the principle that governmental authority must be limited and that it could be limited only if individuals were free to speak truth to power.

Just as in Hamilton's arguments in the Zenger trial, the Cato essays reprinted in the Journal made truth the chief bulwark against the tyranny of power. Like Hamilton, Cato did not advocate "that men should have an uncontrollable liberty to calumniate their superiors, or one another. . . . We have very good laws to punish any abuses of this kind already, and I will approve them, whilst they are prudently and honestly executed, which I really believe they have for the most part been since the Revolution."<sup>29</sup> It was the abuse of these laws to suppress truth that Cato opposed. So long as men were free

to speak the truth, Cato believed, a wicked and tyrannical government could not stand.<sup>30</sup>

To an extent not often appreciated, Cato's understanding of truth was rooted in religion. All human authority and power were divinely limited, in Cato's view. "Power without control appertains to God alone," he wrote, "and no man ought to be trusted with what no man is equal to."<sup>31</sup> Throughout his essays, Cato associated political liberty with religious dissent. While supporting "right religion" and the "present Protestant establishment," Cato argued that each individual had the right and the duty to seek truth in his own way, for the simple reason that no one else could be trusted to do it for him. "Every man's religion is his own," Cato declared, "nor can the religion of any man, of what nature or figure soever, be the religion of another man, unless he also chooses it; which action utterly excludes all force, power, or government."<sup>32</sup> Truth will triumph in both religion and politics, Cato believed; but it must triumph through its own strength, never through the exercise of human power.<sup>33</sup>

Though truth possessed a life of its own in Cato's philosophy, it necessarily fell to each individual to seek truth for himself: "Every man is, in nature and reason, the judge and disposer of his own domestic affairs; and, according to the rules of religion and equity, every man must carry his own conscience."<sup>34</sup> If individual reason and conscience were the way to divine truth, then the authority of human law, whether ecclesiastical or secular, could never be absolute. For Cato, "the violation, therefore, of law does not constitute a crime where the law is bad; but the violation of what ought to be law, is a crime even where there is no law."<sup>35</sup> Cato never developed the specific argument that juries should decide the law as well as the fact in libel cases. But from the Cato essays published in the Journal this notion would have been only a modest extrapolation.



"Cato's Letters" were not the only political essays in the New York Weekly Journal that reflected a fundamentally religious understanding of truth and authority. Many of the writers in the Journal discussed political liberty and religious dissent in similar terms. In both religion and politics, tyranny was attributed to a false authority based upon power rather than truth. An anonymous essay at the end of 1733 declared:

If we reverence men for their power alone, why do we not reverence the Devil, who has so much more power than men? But if reverence is due only to virtuous qualities and useful actions, it is as ridiculous and superstitious to adore great mischievous men as it is to worship a false god or Satan in the stead of God. . . . A right honorable or a right reverend rogue is the most dangerous rogue, and consequently the most detestable.<sup>36</sup>

Another writer described the link between religion and politics in more direct and more general terms:

We often pray for the propagation of Christianity; and yet of how little use would that be to a people who are not yet free? Let us join to it our wishes, that those two invaluable blessings may go together, and that with a religion which is itself freedom, the whole race of mankind may be restored to that liberty which is their undoubted natural right.<sup>37</sup>

Like Cato, the anonymous writers for the Journal usually placed the burden of judging truth upon the reason and conscience of the individual. The history of religious tyranny demonstrated the danger of leaving the interpretation of truth in the hands of power. Using a religious example, one writer explained that he agreed that "the abuse, and not the use of the press, is blameable. But the difficulty lies [in] who shall be the judges of this abuse. . . . In Spain and Portugal to write against transubstantiation is an horrible abuse; in England as great a one (though not so fatal) to write for it."<sup>38</sup> Significantly, several Journal writers explicitly developed this general notion into a theory of the role of juries.

Much of the discussion of the jury system in the Journal was mainly political and legal. Several articles praised the jury system as the most valuable of English political privileges: "this great jewel of liberty, . . . the only

security between the king and his subjects."<sup>39</sup> Some of the essays, however, went beyond politics to place the jury system squarely within the realm of religious practice. The key link in this association was the juror's oath. In several discussions of the role of juries, Journal writers argued that jury-men were divinely bound by their oaths to be "true" and to do what was right, regardless of human law. "There is none of this story of matter of fact, distinguished from law in your oath," said one article.<sup>40</sup> Another writer argued that because of their oaths jurors were not required to follow a judge's direction any more than they were required to believe a witness's testimony. They were bound only by God and only to the truth. He wrote that "anything any jury does ought to be quoadem evangelium, to be what they laid their hands on taking their oath; when they write billa vera on an indictment, they undeniably compare the truth of the contents therein to the truth of the Gospel, and this upon oath."<sup>41</sup>

In short, though the New York Weekly Journal was essentially a political newspaper, it professed a politics with deep religious roots. The easy interplay between politics and religion in the pages of the Journal suggests that for many New Yorkers the two were actually one. For example, in an article in early 1734 on the importance of freedom of the press, the author made it clear that freedom of thought and expression played the same role in both politics and religion -- that is, the discovery of truth. He added:

Such points of religion and politics do stand upon a very weak foundation, if the maintainers of them can be afraid of having their doctrines and measures fairly examined and brought to the test of REASON and DIVINE REVELATION. Those that deny these maxims sap the foundation of our Reformation and Revolution, upon which our religious and civil rights are now established, and therefore they are justly to be esteemed enemies to them, and friends to popery and arbitrary power.<sup>42</sup>

course, the standard invocations of Protestantism. But there was more than just the usual dissent in American Protestantism in 1735. In New England and in the Middle Colonies, religious revivals were brewing, revivals that expressed in purely religious terms the same themes of truth and individual conscience that pervaded the Zenger trial and the Zenger press. A close look at the wider religious milieu of the 1730s suggests that the trial of John Peter Zenger may, in some interesting ways, be viewed as part of the early stages of the Great Awakening.

At least since the work of Alan Heimert in the 1960s, the Great Awakening has been made to explain much about American politics as well as religion -- perhaps too much. Historians such as Gary B. Nash, Rhys Isaac, and Kenneth Lockridge have found in the religious enthusiasm that swept the colonies in the 1730s and '40s some of the roots of a crisis of authority that eventually expressed itself politically in the Revolution. William G. McLoughlin has even gone so far as to describe "the Great Awakening as the key to the Revolution."<sup>43</sup> Recently, however, Jon Butler has argued that the Great Awakening is largely an "interpretative fiction" concocted by historians. In fact, he says, the revivals were "erratic, heterogeneous, and politically benign"; and historians have been "'over-run with Enthusiasm,' " much like the revivalists they have studied.<sup>44</sup> In sweeping generalizations, Butler attacks the sweeping generalizations of other historians. Yet despite his own perhaps overly strident revisionist "enthusiasm," Butler does demonstrate rather persuasively the need to look more closely and narrowly at specific aspects of specific revivals in specific places.

For example, the Great Awakening has always been portrayed as a rather modest affair in New York compared to New England. Neither the New York pastors nor their parishioners are well remembered by historians for their theology or their enthusiasm.<sup>45</sup> But New Yorkers were involved directly in the early 1730s

in several revival-related controversies, including controversies in the rapidly growing Presbyterian churches. As in the revivals of New England, the great issue for the Presbyterians was, at heart, the fundamental question of Protestant Christianity: How are individuals to know God and God's truth? The answers proposed by the leaders of the revival in the Middle Colonies bear an interesting resemblance to Andrew Hamilton's arguments in the Zenger case about truth and men's apprehension of it. And several of the first and most important revival sermons on this question were published in 1735 in the print shop of John Peter Zenger.<sup>46</sup>

Zenger was an early printer and promoter of the works of Gilbert Tennent, for instance. Tennent, a graduate of the famous Log College founded by his father in New Jersey, was the most important of the revivalist preachers in the Middle Colonies. He began his ministry in New Brunswick in 1726, and soon his several congregations between New Brunswick and Staten Island were stirring with religious life. As in all revivals, Tennent's aim was to break up the "presumptuous security" of nominal Christians. He preached what he called "conviction" and "assurance" -- that is, the notion that an individual must feel convicted of sin and must pass through the terror of realizing he was not a true Christian before he could at last feel the genuine assurance of salvation.<sup>47</sup> Tennent's sermons were often filled with hell-fire and damnation. But, like Jonathan Edwards, who was then orchestrating a similar revival in Massachusetts, Tennent believed in using the harsh conviction of God's law only to make way for the sweet assurance of the Gospel.<sup>48</sup>

Central to Tennent's revivalist theology was the notion that each individual must experience a direct and very personal conversion. Understandably, his opponents charged that such a view of purely personal conviction and especially assurance undermined the doctrine and authority of the church.<sup>49</sup> But despite the emotional quality of the conversion experience, Tennent never sought to

take reason out of religion. On the contrary. He argued in one of his popular New York sermons, printed by Zenger in 1735, that God deals with people "in a way best suited to their rational natures."<sup>50</sup> People have the duty to use their reason to ponder and to choose that which is good -- a duty that he called "consideration." "Consideration" was an eminently rational activity, in Tennent's view; but it was also very personal. "This duty of consideration imports serious and solemn deliberation, when the mind of God is not only understood and known, but seriously pondered and laid to heart," he said. This can happen only "when a person communes with his own heart about it."<sup>51</sup>

The belief that conversion was a direct and personal experience, rather than a purely intellectual process of understanding, made the revivalists skeptical of creeds and formal statements of doctrine. This skepticism led to a serious controversy in American Presbyterianism in the 1720s and '30s over the issue of "subscription." Conservatives hoped to protect the church from heretical ministers by requiring them to "subscribe" to the Westminster Confession. Many New York and New Jersey Presbyterians, however, opposed enforced subscription to any creedal interpretation of Scripture. They did not hold that ministers should not be examined. They merely believed that no man-made creed could be infallible, no matter how learned the authorities who devised it. They urged instead subscription to the Bible alone.<sup>52</sup>

The leader of the anti-subscriptionist party in the Middle Colonies was Jonathan Dickinson, another minister whose works were published by John Peter Zenger in New York in the 1730s. In an important sermon on "The Vanity of Human Institutions," Dickinson proclaimed that "the Bible is our only directory."<sup>53</sup> Like Tennent, Dickinson urged that each individual must experience the communion of God for himself, without compulsion. In words reminiscent of Cato and the anonymous writers for the New York Weekly Journal, Dickinson declared:

Imposing any terms of communion by any penal sanctions is eminently teaching for doctrines the commandments of men. Every person in the world has an equal right to judge for themselves, in the affairs of conscience and eternal salvation. And all have the same natural right to all the benefits and comforts of life. By what pretense therefore may they be deprived of any natural right; because they don't subject their consciences to other men's decision? What dreadful work has been made in the world by using methods of force in matters of opinion and conscience.<sup>54</sup>

Dickinson went so far as to call religion based on coercion a kind of idolatry.

He said:

If they without conviction submit to our opinions, they subject their consciences to human, and not to divine authority; and our requiring this of any is demanding a subjection to us, and not to Christ. We have indeed a right to give the reasons of our opinion; and to endeavor to convince others, of what we esteem to be truth: But we have no right to claim their assent with conviction; nor to be offended with them, for not thinking as we do; any more than they have to be offended with us for not thinking as they do. For every one have the same claim as we have, to judge for themselves.<sup>55</sup>

Neither Tennent nor Dickinson -- nor any of the preachers of the Great Awakening -- sought to undermine the authority of religion or of the churches. Their aim was merely to return the churches to the truth; and they believed that God's truth could be discerned by man. But their very belief in the divinity of truth led them -- as it did Hamilton and Cato and the Zenger jury -- to the principle that each individual must judge for himself.

## VI

The Zenger case, then, was as much a religious as a political or legal phenomenon. Like the Great Awakening, the Zenger trial reflected the skepticism for human authority felt by ordinary people who possessed a deep faith in the existence of God and of truth. Like the ministers of "awakened" congregations, who were willing to reject the authority of creeds and hierarchies, the Zenger jurors were willing to reject the instructions of the chief justice of New York. Like the revival converts who asserted their right to interpret the law of God, the Zenger jury asserted the right of ordinary people to inter-

pret the law of man. In both cases, the operative principle was not freedom, but truth. Andrew Hamilton, like a revival preacher, told the jurors that authority lay, not in them, but in truth. He did not ask them to condone individualism or to approve individual diversity of expression -- only truth. The subtle twist, of course, was that it fell to individuals to decide what truth was. And the authority of God and truth and the authority of the individual turned out to be the same.

Thus did America back into freedom of expression in politics and journalism, as it backed into tolerance and diversity in religion. At its origin, freedom of speech and press had little to do with the sanctity of the individual mind. The individual had the right only to serve the truth, as men were free to serve God. Gradually, in the 250 years since Zenger, a genuine philosophy of individualism emerged in the realm of freedom of expression. But the recurrent episodes of repression in American history since 1735 surely suggest that the "truth" standard, whether in religion or in politics, still lies only a little beneath the surface of American libertarianism.

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NOTES

<sup>1</sup> Andrew Hamilton, quoted in A Brief Narrative of the Case and Trial of John Peter Zenger, ed. by Stanley Nider Katz (2nd ed.; Cambridge: Belknap Press of Harvard University Press, 1972), p. 87. This is the most recent republication of the Zenger trial, which was first published by Zenger himself in 1736. Throughout this paper, I have modernized eighteenth-century spelling and capitalization.

<sup>2</sup> Vincent Buranelli, "Introduction," in The Trial of Peter Zenger, ed. by Vincent Buranelli (New York: New York University Press, 1957), p. 24. This book has been reprinted (1975) by Greenwood Press.

<sup>3</sup> Gary B. Nash, The Urban Crucible: Social Change, Political Consciousness, and the Origins of the American Revolution (Cambridge: Harvard University Press, 1979), pp. 140-46. See also Patricia U. Bonomi, A Factious People: Politics and Society in Colonial New York (New York: Columbia University Press, 1971), Part IV; and William Smith, Jr., The History of the Province of New York, ed. by Michael Kammen (Cambridge: Belknap Press of Harvard University Press, 1972), II, 3-23. The first edition of Smith's work appeared in 1757.

<sup>4</sup> Stanley Nider Katz, "Introduction," in A Brief Narrative of the Case and Trial of John Peter Zenger, ed. by Katz, p. 8. See also Vincent Buranelli, "Peter Zenger's Editor," American Quarterly, 7:174-81 (Summer, 1955); and

Cathy Covert, "'Passion Is Ye Prevailing Motive': The Feud Behind the Zenger Case," Journalism Quarterly, 50:3-10 (Spring, 1973).

<sup>5</sup> New York Weekly Journal, 1733-1734, passim. A few selections from the Journal, but not many, are reprinted in A Brief Narrative of the Case and Trial of John Peter Zenger, ed. by Katz, Appendix A; and in Leonard W. Levy, ed., Freedom of the Press from Zenger to Jefferson: Early American Libertarian Theories (Indianapolis: Bobbs-Merrill, 1966), Part I.

<sup>6</sup> A Brief Narrative of the Case and Trial of John Peter Zenger, ed. by Katz, pp. 20-23. Katz also includes reprints of pre-trial materials, in Appendices B and D.

<sup>7</sup> I will refer to the text of the Katz edition of the trial throughout this paper. The most authoritative literal version of the trial narrative is contained in Livingston Rutherford, John Peter Zenger: His Press, His Trial and a Bibliography of Zenger Imprints (New York: Dodd, Mead & Company, 1904). For other editions, see "Bibliography of the Trial of John Peter Zenger," in Rutherford, John Peter Zenger. Rutherford's book was reprinted (1968) by the Johnson Reprint Corporation.

<sup>8</sup> A Brief Narrative of the Case and Trial of John Peter Zenger, ed. by Katz, p. 101 and passim; Rutherford, John Peter Zenger, p. 126.

<sup>9</sup> For example, see George Bancroft, History of the United States from the Discovery of the American Continent (Boston: Little, Brown, 1859), III, 393-94; and Richard Hildreth, The History of the United States of America (New York: Harper and Brothers, 1882), II, 360.

<sup>10</sup> Buranelli, Trial of Peter Zenger, p. 57. See also John Fiske, The Dutch and Quaker Colonies in America (Boston: Houghton Mifflin, 1900), II, 296; and

Rutherford, John Peter Zenger, p. 131.

<sup>11</sup> Levy, Freedom of the Press, pp. xxxi-xxxiii. See also Levy, Legacy of Suppression: Freedom of Speech and Press in Early American History (Cambridge: Harvard University Press, 1960), p. 133; Katz, "Introduction," pp. 1-2; and Warren C. Price, "Reflections on the Trial of John Peter Zenger," Journalism Quarterly, 32:161-68 (Spring, 1955).

<sup>12</sup> Paul Finkelman, "The Zenger Case: Prototype of a Political Trial," in American Political Trials, ed. by Michael R. Belknap (Westport, Conn.: Greenwood Press, 1981), p. 40. See also Clark Rivera, "Ideals, Interests, and Civil Liberty: The Colonial Press and Freedom," Journalism Quarterly, 55:47-53 (Spring, 1978); and Edwin Emery and Michael Emery, The Press and America (4th ed.; Englewood Cliffs, N.J.: Prentice-Hall, 1978), pp. 43-47.

<sup>13</sup> A Brief Narrative of the Case and Trial of John Peter Zenger, ed. by Katz, pp. 62, 69, 75, 84 (quote), and 99.

<sup>14</sup> Levy, Freedom of the Press, p. xxxii; Levy, Legacy of Suppression, p. 133.

<sup>15</sup> A Brief Narrative of the Case and Trial of John Peter Zenger, ed. by Katz, p. 72. See also Hamilton's discussion of the case of Edward Hales, pp. 85-86, and the London Quakers, pp. 92-93. On the trial of the seven bishops see Thomas Macaulay, History of England from the Accession of James II (London: Longman, 1849-1861), II, pp. 990-1039.

<sup>16</sup> A Brief Narrative of the Case and Trial of John Peter Zenger, ed. by Katz, p. 87.

<sup>17</sup> Ibid., pp. 90-91.

<sup>18</sup> Ibid., pp. 75 and 92.

<sup>19</sup> Ibid., p. 227n.

<sup>20</sup> Ibid., pp. 69 and 78.

<sup>21</sup> Ibid., pp. 92-93.

<sup>22</sup> Ibid., p. 96.

<sup>23</sup> Ibid., pp. 95-96.

<sup>24</sup> Barbados Gazette, July, 20, 1737. This letter was reprinted in a pamphlet titled Remarks on Zenger's Trial, Taken Out of the Barbados Gazette for the Benefit of the Students in Law, and Others in North America (New York: William Bradford, 1737). It is also reprinted in A Brief Narrative of the Case and Trial of John Peter Zenger, ed. by Katz, Appendix C.

<sup>25</sup> Barbados Gazette, July 20, 1737, in A Brief Narrative of the Case and Trial of John Peter Zenger, ed. by Katz, p. 180.

<sup>26</sup> Cadwallader Colden, "History of Gov. William Cosby's Administration and of Lt.-Gov. George Clarke's Administration through 1737," reprinted in Collections of the New York Historical Society, 68:337 (1935).

<sup>27</sup> "Cato" (John Trenchard and Thomas Gordon), Cato's Letters: Or, Essays on Liberty, Civil and Religious, and Other Important Subjects (4 vols.; London: T. Woodward, 1733-1755). This four-volume compilation has been reprinted (1971) in two volumes by Da Capo Press.

<sup>28</sup> Levy, Freedom of the Press, p. xxiv; Bernard Bailyn, The Ideological Origins of the American Revolution (Cambridge: Harvard University Press, 1967), Chapter 2.

<sup>29</sup> New York Weekly Journal, December 9, 1734, p. 2.

<sup>30</sup> Ibid. See also ibid., Nov. 11, 1734, pp. 1-2; March 4, 1734, p. 1. I have changed dates to conform to the modern practice of starting the new year on Jan. 1st.

<sup>31</sup> Ibid., March 11, 1734, p. 2. See also Bailyn, Ideological Origins, Chapter 3.

<sup>32</sup> New York Weekly Journal, Aug. 25, 1735, p. 1.

<sup>33</sup> Ibid., Dec. 9, 1734, p. 2.

<sup>34</sup> Ibid., Sept. 8, 1735, p. 2.

<sup>35</sup> Ibid., July 7, 1735, pp. 1-2.

<sup>36</sup> Ibid., Dec. 31, 1733, p. 2.

<sup>37</sup> Ibid., Jan. 13, 1735, p. 3.

<sup>38</sup> Ibid., Feb. 18, 1734, p. 2.

<sup>39</sup> Ibid., Dec. 3, 1733, p. 2. See also ibid., Jan. 7, 1734, pp. 1-2; Jan. 14, 1734, pp. 1-2; Feb. 11, 1734, p. 1; Jan. 20, 1735, pp. 1-3; and July 28, 1735, pp. 1-3.

<sup>40</sup> Ibid., Aug. 2, 1735, p. 3.

<sup>41</sup> Ibid., Jan. 13, 1735, p. 1.

<sup>42</sup> Ibid., Jan. 14, 1734, p. 3.

<sup>43</sup> Alan Heimert, Religion and the American Mind from the Great Awakening to the Revolution (Cambridge: Harvard University Press, 1966), p. viii; Nash, Urban Crucible, Chapter 8; Rhys Isaac, The Transformation of Virginia, 1740-

1790 (Chapel Hill: University of North Carolina Press, 1982), Chapters 8-9; Kenneth A. Lockridge, Settlement and Unsettlement in Early America: The Crisis of Political Legitimacy before the Revolution (Cambridge, England: Cambridge University Press, 1981), pp. 43-48; William G. McLoughlin, "Enthusiasm for Liberty": The Great Awakening as the Key to the Revolution," in Preachers and Politicians: Two Essays on the Origins of the American Revolution, by Jack P. Greene and William G. McLoughlin (Worcester, Mass.: American Antiquarian Society, 1977). See also Richard L. Bushman, "Introduction," in The Great Awakening: Documents on the Revival of Religion, 1740-1745, ed. by Richard L. Bushman (New York: Atheneum, 1970), p. xiv.

44 Jon Butler, "Enthusiasm Described and Descried: The Great Awakening as Interpretative Fiction," Journal of American History, 69:325 (September, 1982).

45 The standard account is Charles Hartshorn Maxson, The Great Awakening in the Middle Colonies (Chicago: University of Chicago Press, 1920). See also Michael Kammen, Colonial New York: A History (New York: Scribner's, 1975), Chapter 9; and Martin E. Lodge, "The Crisis of the Churches in the Middle Colonies, 1720-1750," Pennsylvania Magazine of History and Biography, 95: 195-220 (April, 1971).

46 For a list of the sermons printed by Zenger, see "Bibliography of the Issues of the Zenger Press, 1725-1751," in Rutherford, John Peter Zenger. See also Charles Evans, American Bibliography, Vol. II: 1730-1750 (New York: Peter Smith, 1941). This is a reprint of the original 1904 edition.

47 Leonard J. Trinterud, The Forming of an American Tradition: A Re-examination of Colonial Presbyterianism (Philadelphia: Westminster Press, 1949), pp. 58-59. See also Maxson, Great Awakening, Chapter 3.

48 Heimert, Religion and the American Mind, pp. 39-40. See, for example, Gilbert Tennent, A Solemn Warning to the Secure World from the God of Terrible Majesty, or the Presumptuous Sinner Detected, his Pleas Considered, and his Doom Displayed (Boston: S. Kneeland and T. Green, 1735). This was the only Tennent sermon published outside New York in 1735.

49 Trinterud, Forming of an American Tradition, p. 60. See also Heimert, Religion and the American Mind, Chapter 4. While it is certainly true, as Jon Butler argues, that Tennent never attacked the authority of the ministry itself, this argument seems to miss the point. For it is true that Tennent's attacks on illegitimate authority did have an unsettling effect on church hierarchy. Just as in politics, crises of authority in religion invariably begin as attacks upon illegitimacy, not upon authority itself. See Butler, "Enthusiasm Described and Decried," p. 314. See also Gilbert Tennent, The Danger of an Unconverted Ministry (1742), reprinted in The Great Awakening, ed. by Bushman, pp. 87-93.

50 Gilbert Tennent, The Danger of Forgetting God, and the Duty of Considering our Ways Explained (New York: John Peter Zenger, 1735), pp. 11 and 26.

51 Ibid., p. 5. This view of individual reason and conscience is also developed in another Tennent sermon printed by Zenger in 1735. See Gilbert Tennent, The Espousals, or a Passionate Persuasive to a Marriage with the Lamb of God, wherein the Sinner's Misery and the Redeemer's Glory is Unveiled (New York: J. Peter Zenger, 1735), pp. 33 and 61.

52 Trinterud, Forming of an American Tradition, pp. 43-52; Maxson, Great Awakening, pp. 23-25.

53 Jonathan Dickinson, The Vanity of Human Institutions in the Worship of



God (New York: John Peter Zenger, 1736), pp. 15-16. This was also a recurrent theme of Ebenezer Pemberton, a New York minister and another supporter of the Presbyterian revival whose sermons were published by Zenger in the mid-1730s. See Ebenezer Pemberton, A Sermon Preached before the Commission of the Synod at Philadelphia (New York: John Peter Zenger, 1735), pp. 19-20.

54 Dickinson, Vanity of Human Institutions, p. 11.

55 Ibid., p. 31. Zenger was also the printer and seller for a number of sermons by the famous revivalist George Whitefield in the late 1730s and early 1740s.

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